

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 139 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DHARMISTHA LAXMISHANKAR

Versus

CHUNILAL CHHAGANLAL

Appearance:

MS VASUBEN P SHAH for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/01/98

ORAL JUDGEMENT

This is defendant's Second Appeal. The plaintiff

- respondent is served with notice of Appeal, but is absent. None has appeared on his behalf.

2. Heard the learned Advocate for the appellant and perused the Judgment of the two Courts below.

3. The brief facts are that the plaintiff - husband filed petition against the wife - defendant for divorce and in the alternative for a Decree for judicial separation. The parties were married according to Hindu rites on 13.5.1968. They resided together for some time as husband and wife, but since 14.8.1970 they separated permanently. Making the allegation of cruelty, desertion and wife leaving adulterous life the Decree for divorce was sought and in the alternative the Decree for judicial separation. Various acts of the wife constituting cruelty towards the husband were averred by the plaintiff in the plaint. Judicial separation from the husband by the wife without reasonable cause was also alleged.

4. The wife resisted the Suit denying all these allegations. On the contrary she alleged that she was subjected to illtreatment and torture by the husband. On account of continued illtreatment and cruelty the wife - defendant ultimately was forced to go to her parent's house on 14.8.1970. She pleaded that she was always ready and willing to reside with the plaintiff.

5. The trial Court found that the allegation of cruelty was fully established. However, it found that adulterous behaviour was not established. Consequently the Decree for judicial separation was granted.

6. Feeling aggrieved the Appeal was preferred. The Lower Appellate Court made efforts for reconciliation, but it failed. The Lower Appellate Court agreed with the findings of the trial Court on cruelty. It did not discuss the adulterous behaviour inasmuch as it was negatived by the trial Court.

7. After due consideration of the entire material on record the lower Appellate Court found that the allegation of cruelty made by the husband against the wife - appellant was fully proved. This finding of fact is a concurrent finding of fact based upon proper appraisal of evidence on record and does not suffer from any infirmity or vice of perversity.

8. Desertion by the wife as the ground for judicial separation pleaded by the husband was also found duly established. This finding is also based upon proper appreciation of evidence on record. The Lower Appellate Court at one stage in the Judgment observed that even if it is assumed that desertion is not completely proved even then on the ground of cruelty Decree for judicial separation could be passed. Accordingly the Appeal was

dismissed. It is, therefore, this Second Appeal.

9. The contention of the learned Counsel for the appellant that no effort was made by the appellate Court for reconciliation cannot be accepted inasmuch as in Para : 8 of the Judgment of the Lower Appellate Court it is specifically observed that some efforts were made by the Court firstly for reconciliation which too failed. As such on this ground the Judgment and Decree of the Lower Appellate Court cannot be disturbed.

10. The findings recorded by the two Courts below on cruelty and dessertion are concurrent finding of facts based upon proper appraisal of evidence on record which requires no interference. There is thus no merits in this Appeal. The same is hereby dismissed. No order as to costs.

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